

State of Washington PUBLIC DISCLOSURE COMMISSION

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9:30 a.m. October 26, 2004

MINUTES - REGULAR MEETING

Evergreen Plaza Bldg. Room 206 711 Capitol Way South Olympia, Washington

COMMISSION MEMBERS PRESENT

Michael Connelly, Chair Francis Martin, Secretary Earl Tilly, Member Jane Noland, Member

Via Telephone for last portion of the meeting: Jeannette Wood, Vice Chair

STAFF PRESENT

Vicki Rippie, Executive Director Susan Harris, Assistant Director

Michael Smith, Chief Technology Officer

Nancy Krier, Senior Counsel

Linda Dalton, Sr. Asst. Attorney General

John Lane, Asst. Attorney General

Ruthann Bryant, Secretary

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Michael Connelly at 9:30 a.m. in the Evergreen Plaza Building, Room 206, Olympia, Washington.

Commissioner Comments

Commissioner Connelly noted that the Public Disclosure Commission was again ranked number one in the nation by the Campaign Disclosure Project for its campaign disclosure laws and requirements and the ease of voter access to information. He congratulated staff and expressed his appreciation for their hard work.

Citizen Comments/Concerns

No citizen comments or concerns were expressed.

Minutes

Motion 05-031

Moved by Commissioner Martin, seconded by

Commissioner Tilly:

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The Commission adopts the minutes of September 28, 2004 as written.

The motion passed unanimously.

Enforcement Matters

Hearings
Jefferson County Republican
Central Committee, Case
#04-288

Assistant Attorney General John Lane read the Stipulation of the Parties as to Agreed Facts and Exhibits into the record and summarized the case against the Jefferson County Republican Central Committee for alleged violations of RCW 42.17.530 by sponsoring political advertising that contains false statements about a candidate.

Mr. Lane called PDC Investigator Sally Parker, Mark Rose and Ronald Gregory to testify on behalf of staff. Their testimony provided evidence that Mark Rose was employed by the <u>LA Times</u> and that he wrote several articles for the newspaper.

Attorney John White, representing the Jefferson County Republican Central Committee, summarized his case and called Noel Greenwood and Bryn Armstrong to testify.

Following deliberations Commissioner Connelly stated that the record provided clear evidence that there was a political advertisement that contained a false statement of material fact about a candidate for public office.

Commissioner Connelly continued by saying that the matter appeared to be material since Jefferson County Republican Central Committee ran the ad 400 times and there were five newspaper articles to support Mr. Rose's claim.

In determining malice, Commissioner Connelly stated that the evidence provided at the hearing showed that the Jefferson County Republican Central Committee acted with malice because they, along with the Armstrongs, had copies of Mr.

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Rose's articles but still ran the ads even after the newspaper confirmed employment. Evidence showed that Jefferson County Republican Central Committee had actual knowledge that the statement was false.

Commissioner Connelly concluded by saying that there was also clear evidence that Jefferson County Republican Central Committee acted with reckless disregard by making no attempt to contact the <u>LA Times</u> regarding Mr. Rose's employment history.

Commissioners Martin and Noland concurred with Commissioner Connelly's comments.

Moved by Commissioner Martin, seconded by Commissioner Noland:

In PDC Case #04-288, Jefferson County Republican Central Committee, the Commission finds clear and convincing evidence of violations of RCW 42.17.530.

Voting For: Commissioners Martin, Noland and Connelly.

Voting Against: Commissioner Tilly.

Moved by Commissioner Martin, seconded by Commissioner Connelly:

In PDC Case #04-288, Jefferson County Republican Central Committee, the Commission assesses a penalty of \$1,000.

Voting For: Commissioners Martin, Connelly and Noland.

Voting Against: Commissioner Tilly.

Phil Stutzman read the Stipulation of Facts, Violations and Penalty into the record and summarized the case against More Cops Now for

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Motion 05-033

More Cops Now, Case #04-423

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alleged violations of RCW 42.17.040, .080, .090 and .3691 by failing to report contributions and expenditures, failing to properly disclose an address and time for public inspection of campaign records eight days before the general election and by failing to electronically file reports of contributions and expenditures.

Ed Troyer, Treasurer, apologized and commented that the violations were unintentional. He encouraged the Commission to accept the stipulation.

Motion 05-034

Moved by Commissioner Noland, seconded by Commissioner Martin:

In PDC Case #04-423, More Cops Now, the Commission accepts the Stipulation of Facts, Violations and Penalty of \$3,000 with \$1,500 suspended based on no violations of RCW 42.17 for two years.

The motion passed unanimously.

Executive Session

The Commission went into executive session at 2:10 p.m. to discuss pending and potential litigation with legal counsel.

Public Session

The Commission returned to public session at 2:20 p.m.

Enforcement Matters (cont.)
Report
Washington State Labor Council,
Case #05-067

Susan Harris reported that a 45-day citizen action letter was filed with the Office of the Attorney General by the Evergreen Freedom Foundation alleging that the Washington State Labor Council violated the following:

- RCW 42.17.100 and 42.17.550 by failing to report independent expenditures,
- RCW 42.17.640 by exceeding contribution limits.

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- RCW 42.17.120 by using public funds to affect elections.
- RCW 42.17.040 through 42.17.080 by failing to register and report as a political committee,
- RCW 42.17.640 and 42.17.660 by creating a second "illegally hidden" political committee,
- RCW 42.17.670 and 42.17.730 by failing to report earmarked contributions,
- RCW 42.17.760 by using non-member fees to affect elections.

Ms. Harris summarized staff findings for each violation and reported that none of the alleged violations has been substantiated and each merits dismissal.

Jami Lund representing the Evergreen Freedom Foundation provided additional comments relating to the complaint.

Attorney Jim Oswald representing the Washington State Labor Council was present and encouraged the Commission to dismiss the allegations.

Moved by Commissioner Noland, seconded by Commissioner Martin:

The Commission dismisses the alleged violations of RCW 42.17 by the Washington State Labor Council in PDC Case #05-067.

Voting For: Commissioners Noland, Martin and Tilly.

Abstaining: Commissioner Connelly.

The motion passed.

Request for Review Jeffrey Utter, Case #05-064

Phil Stutzman reported that a brief enforcement hearing was held on September 9, 2004, in which Mr. Utter was found in violation of RCW 42.17.240 by failing to timely file the Statement of Financial Affairs and RCW 42.17.040 for failing to timely file.

Affairs and RCW 42.17.040 for failing to timely file the Candidate Registration. He was assessed a

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penalty of \$200. The forms were filed on September 2, 2004.

Mr. Utter was present via telephone and requested that the penalty amount be waived.

There was no motion to review this matter.

Request for Reconsideration Daniel Goebel, Case #05-030

Phil Stutzman reported that a brief enforcement hearing was held on September 9, 2004, in which Mr. Goebel was found in violation of RCW 42.17.040 by failing to timely file the Candidate Registration. He was assessed a penalty of \$150. The form was filed on September 13, 2004.

Mr. Goebel was present and stated that he had been out of state for an extended period of time and did not receive his mail on a regular basis. He added that he had no money to report and a fine was unsubstantiated.

Commissioner Tilly noted that it is the responsibility of public office holders to file the required forms.

There was no motion to reconsider this matter.

Reporting Modifications
New

Phil Stutzman commented that Ms. Borders had been granted the requested reporting modification at the September 28, 2004 meeting, however additional information was discovered following the meeting and the matter was returned for Commission consideration.

Motion 05-036

Moved by Commissioner Connelly, seconded by Commissioner Martin:

The Commission reconsiders the reporting modification request of Audrey Borders.

The motion passed unanimously.

Audrey Borders, candidate for Charter Review Commission Board Member in Whatcom Co.

Phil Stutzman reported that Ms. Borders requests an exemption from reporting the business and other governmental customers of Borders & Son Quality Roofing, Inc., a corporation which she owns.

He noted that when Ms. Borders ran for office in 2001 she reported the business and other governmental customers of Borders & Son Quality Roofing, Inc.

Ms. Borders was present via telephone and stated that some of her customers were targeted by contractors because she disclosed their names in 2001. She added that her son is taking over the business and following the transition period she would no longer be involved in the daily operations.

Motion 05-037

Moved by Commissioner Noland:

The Commission grants Audrey Borders a reporting modification for non-governmental customers only.

The motion died for lack of a second.

Motion 05-038

Moved by Commissioner Tilly, seconded by Commissioner Martin:

The Commission denies Audrey Borders the requested reporting modification.

Voting For: Commissioners Tilly, Connelly and Martin.

Voting Against: Commissioner Noland.

The motion passed.

Rule Making

Doug Ellis briefly summarized draft rule amendments to WAC 390-17-310, Doing Business in Washington, and WAC 390-37-160 through

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WAC 390-37-175, Brief Enforcement Penalty Schedules.

The Commission approved draft language for WAC 390-17-310, Doing Business in Washington.

The Commission requested that staff define the word "repeatedly" on the penalty schedules and bring the revised language back for consideration at the December meeting.

Advisory Matter

Doug Ellis summarized a request for an Attorney General's Opinion regarding what constitutes an "Elected Legislative Body" for purposes of RCW 42.17.130(1).

The Commission concurred.

Legislation

Vicki Rippie reported on a draft bill regarding Electioneering Communications and restoring limitations on uses of party soft money.

Motion 05-039

Moved by Commissioner Noland, seconded by Commissioner Martin:

The Commission approves the draft bill regarding Electioneering Communications as presented.

Voting For: Commissioners Noland, Martin and Tilly.

Abstaining: Commissioner Connelly.

Executive Session

The Commission went into executive session at 4:20 p.m. to discuss pending and potential litigation with legal counsel. Commissioner Jeannette Wood participated via telephone in the executive session and the remaining public portion of the meeting.

Public Session

The Commission returned to public session at 4:45 p.m.

Motion 05-040

Moved by Commissioner Connelly, seconded by

Commissioner Martin:

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The Public Disclosure Commission finds that in consideration of the October 21, 2004 State Supreme Court decision in Edelman v PDC, No. 74152-2, in order to preserve the general welfare, WAC 390-16-311 is invalid and must be repealed on an emergency basis. The finding is based on the following reasons:

- 1. Because of the Supreme Court found that the rule exceeds the PDC's rule making authority and is inconsistent with RCW 42.17.660, the rule should be repealed as of the date of filing which will be October 27, 2004.
- 2. The repeal action provides notice to all concerned of the decision's impact as of the effective date of the repeal.

The motion passed unanimously.

Commissioner Connelly recused himself from voting on the following motion since he was a candidate receiving funds in the past.

Moved by Commissioner Martin, seconded by Commissioner Noland:

The Commission finds that the decision will be applied prospectively only as of the effective date of the repeal based upon the following findings:

- 1. Because candidates for state office and their contributors have relied in good faith on WAC 390-16-311 since its adoption in 1994; and
- 2. Because candidates, in relying on the WAC 390-16-311, have received and spent contributions from multi-level organizations, in this unique situation, it would be highly impractical to require previously spent or obligated contributions (those spent or obligated prior to the effective date of

Motion 05-041

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- the repeal) to be refunded at this time; and
- 3. Because of the PDC's limited resources, in light of this unusual situation, it would also be highly impractical to go back in time to audit campaigns or otherwise attempt to seek refunds of contributions received and expended years ago, particularly for campaigns disbanded long ago.

Voting For: Commissioners Martin, Noland, Tilly and Wood.

Abstaining: Commissioner Connelly.

The motion passed.

<u>Adjournment</u>

Commissioner Connelly adjourned the meeting at 4:50 p.m. The next meeting is scheduled for Thursday, December 2, 2004.

Approved by the Commission 12/2/04